

## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (the "Agreement"), is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by and between the CITY OF LAS VEGAS REDEVELOPMENT AGENCY (the "RDA") and BANK OF AMERICA, N.A., a national banking association and successor in interest to BANK OF AMERICA NEVADA (the "Developer").

### WITNESSETH:

WHEREAS, the RDA desires to sell to the Developer, and the Developer desires to purchase from the RDA, that certain real property depicted in Exhibit "A" and described more particularly in Exhibit "B" both of which are attached to this Agreement (the "Site");

WHEREAS, the RDA and the Developer mutually desire that the Site be developed with a full service, retail bank facility as described in this Agreement and on the terms and conditions set forth in this Agreement.

WHEREAS, the parties desire to set forth in this Agreement the terms and conditions for the development of the Site.

NOW, THEREFORE, in consideration of the foregoing and of the covenants and conditions contained herein, the parties agree as follows:

#### 1. PURPOSE OF AGREEMENT

The purpose of this Agreement is to effectuate the Redevelopment Plan currently in effect, as amended from time to time (the "Redevelopment Plan") for the Downtown Las Vegas Redevelopment Area (the "Redevelopment Area") by providing for the redevelopment of the Site which is included within the boundaries of the Redevelopment Plan.

The redevelopment of the Site pursuant to this Agreement and the fulfillment generally of this Agreement are in the vital and best interests of the City of Las Vegas, a municipal corporation of the State of Nevada (the "City") and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

This Agreement is subject to the provisions of the Redevelopment Plan that was approved and adopted on March 5, 1986, by the City Council of the City, and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements. The Redevelopment Area is located in the City and the exact boundaries thereof are specifically described in the Redevelopment Plan.

## 2. THE SITE

The Site consists of one and forty-three one hundredths (1.43) acres, is depicted generally in Exhibit A and described more particularly in Exhibit B, both of which are attached hereto and incorporated herein by this reference. The Site consists of vacant land to which the utilities and infrastructure and all off-site improvements (excluding sidewalks and driveways) are available. It is the sole responsibility and cost of the Developer to obtain and connect the necessary services from the local utility companies.

## 3. PARTIES TO THE AGREEMENT

(a) RDA is an agency of the City. The office of RDA is located at 400 Stewart Avenue, Las Vegas, Nevada 89101. RDA shall have the right to assign this Agreement to the City.

(b) The Developer is Bank of America, N.A., a national banking association. The principal office of the Developer is located at Bank of America, N.A., Bank of America, N.A., 13510 Ballantyne Corp Place, 6th Floor, Attn: Corporate Real Estate Administration, NC2-109-06-05, Charlotte, NC 28277. Where ever the term "Developer" is used herein, such term shall include any permitted nominee, assignee or successor in interest as used herein provided, including any development entity controlled by the Developer. The Developer shall disclose to RDA its principals as required by Section 33 of this Agreement.

(c) The qualifications and identity of the Developer are of particular concern to the City and RDA, and it is because of such qualifications that RDA has entered into this Agreement with the Developer. Developer agrees that:

(i) No voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement except as expressly set forth herein; and

(ii) The Developer shall not assign all or any part of this Agreement without the prior written approval of RDA except as expressly permitted below in this Section 3.

This Agreement may be terminated by RDA if there is any change (voluntary or involuntary) in the membership, management or control of the Developer except as expressly provided herein. Notwithstanding the foregoing, the following shall be permitted transfers and shall not require RDA's approval hereunder:

(x) A transfer to any entity in which the Developer has (1) a minimum of thirty percent (30%) of the ownership interests in such entity and (2) management control of such entity; and

(y) A transfer of stock in a publicly held corporation or of the



beneficial interest in any publicly held partnership or real estate investment trust.

(z) A transfer to any entity resulting from a merger or consolidation with Developer

#### **4. ACQUISITION OF SITE AND PURCHASE PRICE**

RDA agrees to sell, and the Developer agrees to purchase, the Site on the terms and conditions provided herein. The Purchase Price for the Site is Ten Dollars (\$10.00) (the "Purchase Price").

#### **5. PAYMENT OF PURCHASE PRICE**

The entire Purchase Price for the Site is due and payable at or before the close of escrow as described in Section 11.

#### **6. SITE DEVELOPMENT**

The Developer agrees that:

(a) Any and all development on the Site will conform to all zoning regulations and all applicable building and other codes as adopted by the City of Las Vegas.

(b) The Site initially will be utilized for the purpose of constructing a full service retail banking facility with a building footprint of approximately 4,300 square feet in size (the "Building") for exclusive use as set forth in the Site Plan attached hereto as Exhibit A and not for speculative purposes.

(c) The Developer will fully develop the Site with the Building, setbacks, landscaping, sidewalks, parking lots, driveways, sewer lines, on-site utilities, and any other required on-site and off-site improvements (the "Project") as more fully described in the Scope of Development (attached hereto as Exhibit "D") and within the time schedule as set forth in this Section 6.

(d) The Project will be developed within the time schedule set forth in the Schedule of Performance (attached hereto as Exhibit "E"). Developer agrees that, in all events (but subject to any extensions due to Force Majeure Delays, as defined below), within twelve (12) months after the acquisition of the Site, the Developer will commence construction and will complete such construction within twelve (12) months after commencement of construction. The commencement of construction shall be evidenced by the pouring of the foundation for the Project. The completion of construction shall be evidenced by the issuance of either a temporary or permanent certificate of occupancy for the Project from the City and Certificate of Completion for the Project from RDA as further described in Section 6(k) below. Both commencement of construction and completion of construction will be extended by such additional time as corresponds to the extent of any delay that is caused by Force Majeure Delays. The term "Force

Force Majeure Delays" shall mean delays caused by occurrences beyond the reasonable control and without the fault, negligence or financial inability of a party hereto or its contractors, including permitting delays (i.e., unusual delays by the City in reviewing and/or commenting on Developer's applications for such permits and/or in issuing such permits following its approval of such applications), strikes, labor disputes, fire, earthquake, floods and other out of the ordinary actions of the elements, enemy invasion, acts of war, terrorism, bioterrorism, insurrection, sabotage, laws, orders or actions of governmental, civil or military authorities, governmental restrictions, riot, civil commotion, judicial or administrative proceedings commenced by persons not a party to this Agreement and unavoidable casualty. If the performance of an obligation hereunder or under any other agreement or declaration, other than the payment of money, is expressly subject to the effect of Force Majeure Delay, then, unless otherwise provided herein or in such other agreement or declaration to the contrary, the effect of a Force Majeure Delay shall be to extend the time for performance of such obligation for the reasonable period of such Force Majeure Delay, but in no event greater than the period of the Force Majeure Delay.

(e) The Developer will be solely responsible, at its expense, for:

(i) The installation of all sidewalks, driveways, on-site utilities, sewer lines, and all other on-site and off-site improvements required for the development of the Site, provided that any off-site improvements required by the City are reasonably acceptable to the Developer;

(ii) The relocation of any utilities relative to any utility easements on the Site, if applicable, provided that RDA shall cause any necessary easements to be granted to Developer in the event any of the utilities are not accessible from the Site; and,

(iii) The demolition of any existing improvements on the Site.

(f) RDA agrees to sign any required map, vacation, permit and utility applications during its period of ownership of the Site, subject to the terms of this Agreement. The Developer agrees to assume all costs associated with the preparation and submission of the Site Development Plan review application to the City (including application fees).

(g) For the purposes of assuring compliance with this Agreement, representatives of RDA and the City shall have the reasonable right of access to the Site without charges or fees and at normal construction hours during the period of construction for the purposes of this Agreement, including, but not limited to, the inspection of the work being performed in constructing the improvements. Such representatives of RDA or the City shall be those who are so identified in writing by the RDA's Executive Director. RDA and the City shall defend (with counsel reasonably acceptable to Developer) indemnify the Developer and hold it harmless from any damage caused or liability arising out of this right to access. The foregoing indemnity is subject to the liability limitations of NRS 41.035.

(h) The Developer agrees to indemnify, hold harmless and defend (with counsel acceptable to RDA) RDA, the City, their affiliates, its and their officers, agents, servants



and employees against and from any and all actual or threatened liabilities, claims, actions, damages, penalties, costs and expenses (including attorney's fees) and losses directly or indirectly arising out of or resulting from or relating in anyway to the development and/or operation of the Project excluding any actual liabilities, damages, penalties, costs, expenses or losses directly arising out of or resulting from the acts of the City or RDA.

(i) Failure on the part of the Developer, after acquisition of the Site, to comply with the provisions of this Section 6 shall constitute a default under this Agreement. Notwithstanding the foregoing, prior to exercising any of its rights and remedies hereunder or under applicable law, the RDA shall first provide Developer with written notice of such default and allow Developer thirty (30) days to cure said default, unless such default cannot reasonably be cured within such 30-day period, in which event Developer shall not be in default hereunder so long as it commences to cure such failure within thirty (30) days and thereafter diligently attempts to cure such failure.

(j) Failure on the part of RDA, prior to conveyance of the Site, to comply with the provisions of this Section 6 shall constitute a default under this Agreement. Developer shall provide RDA with written notice of default and allow RDA thirty (30) days to cure said default, unless such default cannot reasonably be cured within such 30-day period, in which event RDA shall not be in default hereunder so long as it commences to cure such failure and thereafter diligently attempts to cure such failure.

(k) Developer shall notify RDA in writing (a "Completion Notice") when Developer has substantially completed the Project. Within ten (10) business days after RDA's receipt of a Completion Notice, RDA and Developer shall conduct a joint inspection of the Project or applicable portion. If, within RDA's reasonable judgment, the Developer has substantially completed the Project, RDA covenants and agrees to execute and deliver to Developer a Certificate of Completion, in the form of Exhibit "H", duly acknowledged and in recordable form, which shall constitute conclusive evidence that Developer has fulfilled its obligations under the DDA to develop and construct the Project.

## **7. PREVAILING WAGE AND EMPLOYMENT PLAN REQUIREMENTS**

Developer fully understands and acknowledges that:

(a) The Site is being conveyed to it in accordance with the RDA's powers pursuant to Nevada Revised Statutes (NRS) 279. Therefore, pursuant to NRS 279.500(2) the development of the Project by the Developer on the Site is subject to the provisions of NRS 338.010 to 338.090, inclusive, requiring the payment of prevailing wages, to the same extent as if the RDA had awarded the contract for the construction of the Project.

(b) Prior to its execution of this Agreement, Developer has submitted to the RDA an Employment Plan that meets the requirements of NRS 279.482, as well as, the Employment Plan Policies and Procedures of the RDA (hereinafter the "Employment Plan").

(c) Developer will fully comply with all provisions of the Employment Plan, attached hereto as Exhibit "C".

## 8. GENERAL REPRESENTATIONS

### (a) Representations and Warranties by RDA.

RDA represents and warrants that as of the effective date hereof and the date of close of escrow:

- (i) RDA is an agency of the City.
- (ii) RDA has all requisite power and authority to enter into and perform its obligations under this Agreement.
- (iii) By proper action of RDA, RDA's signatories have been duly authorized to execute and deliver this Agreement.
- (iv) To RDA's actual knowledge, other than a pending Right-of-Way taking (as depicted in Exhibit A and described in Exhibit B), no condemnation, eminent domain or similar proceedings have been instituted or threatened against the Site.
- (v) To RDA's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against the Site or against RDA which would inhibit RDA's ability to perform its obligations under this Agreement.
- (vi) To RDA's actual knowledge, there are no legal actions, suits or proceedings, pending or threatened, before any judicial body or any governmental or quasi-governmental authority, against or affecting the Site.
- (vii) To RDA's actual knowledge, the execution, delivery and performance of this Agreement by RDA will not (1) conflict with or be in contravention of any provision of law, order, rule or regulation applicable to RDA or the Site, or (2) result in any lien, charge or encumbrance of any nature on the Site other than as permitted by this Agreement.
- (viii) The execution of this Agreement (or other contract obligations) by RDA does not violate any provision of any other agreement to which RDA is a party.
- (ix) Except for as may be specifically set forth herein, no approvals or consents not heretofore obtained by RDA are necessary in connection with the execution of this Agreement by RDA or with the performance by RDA of its obligations hereunder.



(x) To RDA's actual knowledge, all matters relating to the Redevelopment Plan have occurred in accordance with applicable laws and all appeal periods for challenging the Redevelopment Plan as it relates to the Site have expired.

(xi) To RDA's actual knowledge, other than a pending Right-of-Way taking and easements pending recordation (all of which are depicted in Exhibit A and described in Exhibit B) there are no encumbrances, liens or claims on the Site other than as set forth in the title report.

(xii) To RDA's actual knowledge, there are no violations of any existing laws or codes at the Site and Developer's development and operation of the Site for a full-service bank will not violate any existing applicable laws or codes.

(xiii) RDA has disclosed to Developer all material information in RDA's possession relating to the Site.

(xiv) To RDA's actual knowledge, there are no occupants of the Site.

(xv) To RDA's actual knowledge, there is no work which has been done which could result in the filing of any mechanic's lien on the Site.

(xvi) To RDA's actual knowledge, the only special laws which may affect the Developer's ability or cost to develop the Project is the Redevelopment Plan, currently in effect, as amended from time to time.

As used in this Agreement, the term "RDA's actual knowledge" means the actual knowledge of RDA staff.

(b) Representations and Warranties of the Developer

The Developer represents and warrants to RDA the following are true and correct as of the effective date hereof and the date of close of escrow:

(i) The Developer is a national banking association duly organized and existing under the laws of the United States of America.

(ii) The Developer has all requisite power and authority to carry out business as now and whenever conducted and to enter into and perform its obligations under this Agreement.

(iii) By proper action of the Developer, the Developer's signatories have been duly authorized to execute and deliver this Agreement.

(iv) The execution of this Agreement by the Developer does not violate any provision of any other agreement to which the Developer is a party.

(v) Except as may be specifically set forth in this Agreement, no approvals or consents not heretofore obtained by the Developer are necessary in connection with the execution of this Agreement by the Developer or with the performance by the Developer of its obligations hereunder.

(vi) Neither the Developer nor any of its principals is currently a debtor in a case under the Bankruptcy Code (Title 11 U.S.C.), is the subject of an involuntary petition under the Bankruptcy Code, has made an assignment for the benefit of creditors or is insolvent and unable to pay its debts as they become due.

(vii) To the Developer's actual knowledge, there are no legal actions, suits or proceedings pending or threatened before any judicial body or any governmental or quasi-governmental authority against the Developer which would inhibit the Developer's ability to perform its obligations under this Agreement.

## **9. EARNEST MONEY DEPOSIT**

Concurrently with its execution of this Agreement, the Developer has delivered to the RDA a deposit (the "Earnest Money Deposit") in the form of either cash or a cashier's check in the amount of Ten Dollars (\$10.00).

Upon fulfillment of all conditions necessary to enable escrow to close with respect to the Site, the Earnest Money Deposit shall be applied toward the purchase of the Site.

## **10. ESCROW**

(a) RDA and the Developer agree to open an escrow with Nevada Title Company, (the "Title Company"), as escrow agent (the "Escrow Agent"), whose address is 2500 N. Buffalo Drive, Suite 150, Las Vegas, Nevada, Kristin Ravelo, Commercial Escrow Officer, within seven (7) days after both parties have fully executed this Agreement. This Agreement constitutes the joint escrow instructions of RDA and the Developer, and a fully executed copy of the Agreement shall be delivered to the Escrow Agent upon the opening of escrow. RDA and the Developer shall provide such additional escrow instructions as shall be necessary and consistent with this Agreement. The Escrow Agent hereby is empowered and directed to act under this Agreement, and, upon indicating its acceptance of the provisions of this Section 10 in writing, delivered to RDA and to the Developer after the opening of the escrow, shall carry out its duties as Escrow Agent hereunder.

(b) The Developer shall deposit into escrow the following fees, charges and costs after the Escrow Agent has notified the Developer of the amount of such fees, charges and costs, but not earlier than ten (10) days prior to the scheduled date for the close of escrow:

(i) One-half (1/2) of the escrow fee and the recording costs for other recording documents;



(ii) All of the premium and costs for those special endorsements requested by the Developer (except for those necessary to remove title exceptions of Developer that the RDA agreed to remove in accordance with Section 12 (b) in which case such endorsement costs shall be the sole responsibility of the RDA); and

(iii) Any other applicable closing costs as allocated in accordance with customary practice in Clark County, Nevada.

(c) RDA shall pay in escrow to the Escrow Agent (or the same shall be deducted from RDA's proceeds payable at the close of escrow) the following fees, charges and costs after the Escrow Agent has notified the Agency of the amount of such fees, charges and costs, but not earlier than one (1) day prior to the scheduled date for the close of escrow:

(i) One-half (1/2) of the escrow fee;

(ii) The recording costs for the Deed as defined in Section 12;

(iii) Any state, county or city documentary transfer tax;

(iv) Ad valorem taxes, if any, upon the Site for any time prior to conveyance of title; and

(v) The premium and costs for a standard CLTA policy form of owner's title insurance in the amount of the purchase price (including the cost of any endorsements necessary to remove those title exceptions of Developer that the RDA agreed to remove in accordance with Section 12 (b) but have not been removed by the Closing Date);

(vi) Any other applicable closing costs as allocated in accordance with customary practice in Clark County, Nevada.

(d) Not later than one (1) business day prior to the Closing Date, RDA will deposit with the Escrow Agent the following:

(i) The Deed as defined in Section 12 (and other recording documents) duly executed and acknowledged by RDA, any other documents which must be recorded, as well as, any other assignments or conveyance documents necessary to fully transfer all improvements thereon and all easements, rights-of-way, rights and appurtenances thereto belonging or appertaining to such land, including all interests of RDA in all streets and alleys adjoining the Site.

(ii) The Declaration of Development Covenants and Restrictions duly executed and acknowledged by RDA, in a form that is consistent with Exhibit "G" to this Agreement.

(iii) Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement which have not been delivered.

(e) Not later than one (1) business day prior to the close of escrow, Developer shall deposit and deliver to Escrow Agent the following items:

(i) The Deed accepted and duly executed by the Developer, any other documents which must be recorded, as well as, any other assignments or conveyance documents necessary to fully transfer all improvements thereon and all easements, rights-of-way, rights and appurtenances thereto belonging or appertaining to such land, including all interests of RDA in all streets and alleys adjoining the Site.

(ii) The Declaration of Development Covenants and Restrictions duly executed and acknowledged by Developer.

(iii) Any other documents, instruments, data, records, correspondence or agreements called for under this Agreement which have been delivered.

(f) The Escrow Agent is authorized and instructed to:

(i) Charge the parties obligated hereunder, and to pay to the persons entitled thereto, any fees, charges and costs payable under this Section 10 and related solely to the acquisition and transfer to the Developer of the Site. Before such payments are made, the Escrow Agent shall notify RDA and the Developer of the fees, charges and costs necessary to clear title and close the escrow.

(ii) Credit from RDA to the Developer Ten Dollars (\$10.00) towards the Purchase Price for the Earnest Money Deposit.

(iii) Verify in writing that RDA and the Developer have approved the respective closing statements prior to close of escrow.

(iv) Disburse funds and deliver the Deed and other documents to the parties entitled thereto when the conditions of this escrow have been fulfilled by RDA and the Developer.

(v) Obtain and charge RDA and the Developer all of the premiums and costs for the respective title insurance policies and endorsements thereto.

(vi) Record any instruments delivered through this escrow, if necessary or proper, to vest title in the Developer in accordance with the terms and provisions of this Agreement.



(g) All funds received in this escrow shall be deposited by the Escrow Agent with other escrow funds of the Escrow Agent in a general interest bearing escrow account or accounts with any state or national bank doing business in the State of Nevada, provided that if there is a charge for establishing such an interest-bearing account and if such charge is reasonably expected to exceed the interest to be earned on such funds then notwithstanding the foregoing such funds may be held in a non-interest bearing account. Such funds may be transferred to any other such general interest bearing escrow account or accounts. All disbursements shall be made by check of the Escrow Agent. All adjustments shall be made on the basis of a thirty (30) day month. Any interest that is earned on funds deposited under this paragraph shall be for the benefit of the party responsible for depositing those funds with the Escrow Agent and apply to the Purchase Price or returned to the Developer pursuant to an express provision of this Agreement.

(h) If this escrow is not in condition to close before the time for the conveyance of the Site as established in this Agreement, either Party who then shall have fully performed the acts to be performed before the conveyance of title may, in writing, terminate this Agreement and demand the return of its money, papers or documents. Thereupon all obligations and liabilities of the Parties shall cease and terminate, except that the Party who has not fully performed shall be solely responsible for any escrow cancellation charges. If neither RDA nor the Developer shall have fully performed the acts to be performed by it on or before the time for the conveyance of the Site as established in this Agreement, no termination or demand for return shall be recognized until five (5) days after the Escrow Agent shall have mailed copies of such demand to the other party or parties at the address of its or their principal place or places of business. If any objections are raised within the five (5) day period, the Escrow Agent is authorized to hold all money, papers and documents with respect to the Site until instructed in writing by both RDA and the Developer or, upon failure thereof, by a court of competent jurisdiction. If no such demands are made, the escrow shall be closed as soon as possible. Nothing in this Section 10 shall be construed to impair or affect the rights or obligations of RDA or the Developer to specific performance.

(i) The Escrow Agent shall not be obligated to return any such money, papers or documents except upon the written instructions of both RDA and the Developer or until the party entitled thereto has been determined by a final decision of a court of competent jurisdiction.

(j) Any amendment of these escrow instructions shall be in writing and signed by both RDA and the Developer. At the time of any amendment, the Escrow Agent shall agree to carry out its duties as Escrow Agent under such amendment. All communications from the Escrow Agent to RDA or the Developer shall be directed to the addresses and in the manner established in Section 29 of this Agreement for notices, demands and communications between RDA and the Developer.

(k) The liability of the Escrow Agent under this Agreement is limited to performance of the obligations imposed upon it under Sections 10 to 15, inclusive, of this Agreement except for incidents resulting from the negligence of or failure to follow instructions on the part of the Escrow Agent.

(l) Each party represents and warrants that no real estate broker is entitled to any commission as the procuring cause of this transaction resulting from any actions or words by or on behalf of such party, and each party agrees to protect, defend, indemnify and hold the other party harmless from any claim or demand made by any brokers.

#### **11. CLOSE OF ESCROW, CONVEYANCE OF TITLE AND DELIVERY OF POSSESSION**

(a) Provided that the Developer is not in default under this Agreement and all conditions precedent to such conveyance have occurred, the consummation of the sale, purchase and conveyance to the Developer of title to the Site (the "Closing") shall be completed on a mutually agreeable date (the "Closing Date") not later than (15) days after the later of (i) all conditions precedent to such conveyance having been satisfied (or waived), or (ii) the expiration of the Inspection Period (as defined in Section 20). RDA and the Developer agree to perform all acts necessary to conveyance of title in sufficient time for title to be conveyed in accordance with the foregoing provision.

(b) Notwithstanding any other provision of this Agreement, the Developer's obligation to proceed with the close of escrow is subject to the satisfaction or waiver by the Developer of each of the conditions precedent described below, which are solely for the benefit of the Developer and which shall be satisfied or waived prior to close of escrow:

(i) RDA shall not be in violation of any of its material obligations under this Agreement; and,

(ii) RDA Board has approved the pending cross access easement on the Site and said easement has been recorded with the Office of the County Recorder of Clark County;

(iii) The pending Right-of-Way taking and easements for American Disabilities Act and fire hydrant purposes (all of which are depicted in Exhibit A and described in Exhibit B) have been recorded with the Office of the County Recorder of Clark County; and,

(iii) Developer has not elected to cancel this Agreement prior to the expiration of the Inspection Period in Section 20 or in accordance with its termination rights under Section 13(b).

(iv) Title Company has issued (or has irrevocably committed to issue) to Developer the Title Policy, subject only to those title exceptions not objected to (or waived by) Developer pursuant to Section 13(b).

(v) Developer and the RDA have both agreed on the final forms of the Declaration of Development, Covenants and Restrictions, Quit Claim Deed and the Irrevocable Escrow Instructions.



(vi) Developer shall have received the necessary approval from the Office of the Comptroller of the United States for the operation of a banking facility on the Site.

(c) Notwithstanding any other provision of this Agreement, RDA's obligation to proceed with the close of escrow is subject to the satisfaction or waiver by RDA of each of the conditions precedent described below, which are solely for the benefit of RDA and which shall be satisfied or waived prior to close of escrow:

(i) Developer shall not be in violation of any of its material obligations under this Agreement; and,

(ii) Developer is prepared at the close of escrow to execute and deliver the Declaration of Development Covenant and Restrictions, Quit Claim Deed and Irrevocable Escrow Instructions.

(d) Possession shall be delivered to the Developer concurrently with the conveyance of title, except that limited access shall be permitted before conveyance of title as permitted in Section 20 of this Agreement.

## **12. FORM OF DEED**

The RDA shall convey to the Developer or to its nominee fee simple title to the Site in the condition provided in Section 13 of this Agreement by a Grant, Bargain and Sale Deed (the "Deed") in a form that is consistent with Exhibit "F" to this Agreement.

## **13. CONDITION OF TITLE**

(a) RDA shall convey to the Developer fee simple title to the Site, free and clear of all rights of possession and all other liens, claims and encumbrances, other than the following:

(i) A lien not yet delinquent for ad valorem taxes for real property, and any general or special assessments against the Site.

(ii) All matters disclosed by the Title Report or the ALTA survey described in paragraph (b) of this Section 13, or any Supplemental Report, and which are approved or deemed approved by the Developer in accordance with this Section 13.

(iii) The easements, conditions, covenants or reservations set forth in the Deed.

(b) The Escrow Agent shall, within seven (7) calendar days from the receipt of a copy of the fully executed Agreement by Escrow Agent, deliver to the Developer a preliminary

title report and legible copies of all documents referred to therein covering or relating to the Site (collectively the "Title Report"). The Developer, at its discretion, may obtain its own ALTA survey (the "ALTA Survey") of the Site (at the Developer's sole expense, but with the cooperation and all survey information available to RDA being provided to assist in obtaining such survey). The Developer shall then approve or disapprove the exceptions listed in such Title Report and ALTA Survey as to the Site to be acquired by giving the Escrow Agent written notice thereof within thirty (30) days of the Developer's receipt of the ALTA Survey but in no event later than the expiration of the Inspection Period (as defined in Section 20). Failure to give written notice to the Escrow Agent and RDA by such date of approval or disapproval of some or all of the exceptions shall be deemed to be approval of all exceptions, except for monetary liens and taxes. If Developer disapproves any exceptions, RDA shall have five (5) days within which to agree in writing to remove the exception. Failure to give written notice of such agreement to the Developer and the Escrow Agent shall be deemed to be refusal. If RDA does not agree to remove any other exceptions properly and timely disapproved by the Developer, this Agreement shall terminate without further liability to Developer, unless the Developer waives its objection in writing delivered to RDA and to the Escrow Agent. If RDA shall agree to remove any exception objected to by the Developer, RDA shall then have until the date for close of escrow within which to remove such exception. If RDA is unable to remove any exception objected to by the Developer and which RDA has agreed to remove by the date for close of escrow, the Developer may elect to (i) terminate this Agreement and the Earnest Money Deposit will be returned to the Developer; or (ii) waive the objection and close escrow.

(c) As a condition of the conveyance to Developer of the Site, the Developer shall execute and acknowledge the Declaration of Development Covenants and Restrictions which set forth certain obligations owing to RDA by Developer concerning the activities of Developer on and in connection with the Site.

#### **14. CLOSE OF ESCROW**

Upon the fulfillment of the conditions described in Sections 10 and 11, the Escrow Agent shall file the deed for recordation among the land records in the Office of the County Recorder of Clark County and shall deliver to the Developer a title insurance policy insuring title in conformity with Sections 13 and 15 of the Agreement. The recordation of the deed shall constitute the close of escrow.

#### **15. TITLE INSURANCE**

Concurrently with recordation of any deed, the Title Company shall provide and deliver to the Developer an original ALTA owner's title insurance policy issued by the Title Company insuring that the title to the property is vested in the Developer in the condition required by Section 13 of this Agreement and in the amount of the appraised value of the property ("Title Policy"). The Title Company shall provide the RDA with a duplicate original of the Title Policy.



## **16. TAXES, ASSESSMENTS, ENCUMBRANCES AND LIENS**

The Developer shall be responsible for the payment of all real estate taxes and assessments assessed and levied on the Site for any period subsequent to conveyance of title thereto. The RDA shall be responsible for the payment of all real estate taxes and assessments assessed and levied on the Site for the period on or prior to the Closing Date. The foregoing obligation of RDA is expressly intended to survive the conveyance of title to the Site by the RDA to the Developer and the recordation of the Deed. Prior to conveyance of title, the Developer shall not place or allow to be placed on the Site (or portion thereof) any encumbrance or lien.

## **17. CONVEYANCE FREE OF POSSESSION**

The Site shall be conveyed free of any possession or right of possession by any other person except for:

- (i) A pending cross access easement (as depicted in Exhibit A and described in Exhibit B) on the Site;
- (ii) Any easements of record on certain portions of the Site to the extent approved by Developer pursuant to Section 13(b); or,
- (iii) That of the Developer.

## **18. ZONING OF THE SITE**

The RDA represents that the City of Las Vegas General Plan and zoning ordinances and the Redevelopment Plan permit the development and construction on the Site of a full service, retail banking facility, and that the applicable appeal periods for making any challenge to such permitted use have expired.

## **19. "AS IS" SALE**

Prior to the close of escrow, the Developer and its representatives will have been afforded the opportunity to make such inspections of the Site and matters related thereto as the Developer and its representatives may desire. The Developer acknowledges and agrees that the Site is to be sold and conveyed to and accepted by the Developer in an "as is" condition with, if any, all faults and defects. Except as otherwise specifically stated in this Agreement, the RDA makes no representations or warranties of any kind whatsoever, either expressed or implied, with respect to the Site or any of such related matters; in particular, but without limitation, the RDA makes no representations or warranties with respect to the use, condition, title (except as provided by the deed to be delivered by the RDA to the Developer as set forth in Section 12), occupation or management of the Site, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdividing, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws,

codes, ordinances, regulations or requirements affecting or relating to the Site. The Developer acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understanding of the parties with respect to the subject matter hereof and the purchase and sale of the Site and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

## **20. INSPECTION BY THE DEVELOPER**

Commencing from the Effective Date of this Agreement and extending for a period of sixty (60) days thereafter (the "Inspection Period"), the Developer and its representative shall have the right to enter upon and inspect the Site at all reasonable times for the purpose of conducting such boundary and topographical surveys, surface and subsurface soil and engineering tests and environmental assessments as the Developer may reasonably require, but such surveys, tests and assessments shall not damage the Site. The Developer shall indemnify, defend and hold the RDA harmless for any personal injury, death or property damage, including costs and attorney's fees, arising out of any activity by the Developer or its agents, employees or contractors pursuant to this Section. The Developer shall have access to all data and information on the Site available to the RDA, but without warranty or representation by the RDA as to the completeness, correctness or validity of such data and information.

Any entry upon and inspection of the Site by the Developer prior to conveyance of title thereto shall be done only after written consent of the RDA (which consent shall not be unreasonably withheld) and at the sole expense of the Developer. The Developer shall save and protect the RDA against any claims resulting from each and every entry upon and inspection of the Site and execute such documents as are customarily required for entry onto public property. The RDA Executive Director is authorized to execute such documents for the Developer's entry onto public property without further action by the RDA Board. Copies of data, surveys and tests obtained or made by the Developer on the Site shall be filed with the RDA. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

Notwithstanding any other provision of this Agreement, the Developer shall have the right to terminate this Agreement, prior to expiration of the Inspection Period, if inspection of the Site reveals soil or similar conditions that, in the Developer's sole judgment, make development impossible or impractical. Upon its exercise of said right to terminate, the Developer shall be entitled to the return of the Earnest Money Deposit.

## **21. GOVERNMENTAL PERMITS**

Nothing in this Agreement shall affect the responsibility of the Developer to seek, obtain and comply with the conditions of any and all permits and governmental authorizations necessary to develop the Site or any portion thereof. The Developer shall be solely responsible for the payment of any and all permit fees, which shall be limited to those fees that are authorized by ordinance.



## **22. ASSIGNMENT**

The Developer hereby represents and warrants that the Site is being acquired for the purpose of development in accordance with the provisions of Section 6, and is not for speculative purposes. The Developer shall not assign any interest in or delegate any obligation under this Agreement, or sell or transfer the Site or any portion thereof for a period of five (5) years from the date that title passes to the Site, without the written consent of the RDA, provided that such consent shall not be required for any assignment to an "Affiliated Entity" of Developer. For purposes of the foregoing, an "Affiliated Entity" is defined as (a) any entity which controls, is controlled by, or is under common control with, Developer, (b) any entity that succeeds to Developer's business by, or any entity resulting from, merger, consolidation, reorganization or other form of corporate reorganization, or (c) any purchaser who acquires all or substantially all of the Developer's assets and/or stock.

## **23. TIME OF ESSENCE**

Time is of the essence of this Agreement and every obligation hereunder.

## **24. DEFAULT AND REMEDIES**

If the Developer fails to fulfill its obligations with respect to the purchase of the Site, where such failure is not based upon defective title or is not otherwise excused specifically under this Agreement, the RDA shall be entitled to terminate this Agreement and retain the Earnest Money Deposit.

Additionally, either party may avail itself of any legal or equitable remedy for breach. No such remedy shall be available unless and until:

- (a) Written notice of default is provided to the party in default; and
- (b) Within twenty (20) days after receipt of such notice, such default has not been cured to the reasonable satisfaction of the party giving notice.

## **25. RIGHT TO REPURCHASE, REENTER AND REPOSSESS**

In addition to and independent of any other remedy available to it, the RDA shall have the additional right at its option to repurchase, reenter and take possession of the Site with all improvements thereon if, after conveyance of title thereto and prior to the issuance of all certificates of occupancy therefore, the Developer does any of the following:

- (a) Fails to complete construction of the improvements as required by this Agreement under Section 6(d) as evidenced by issuance of a temporary or permanent Certificate of Occupancy by the City of Las Vegas. This is a condition subsequent and not merely a covenant.

(b) Transfers the Site or any part thereof in violation of this Agreement. This is a condition subsequent and not merely a covenant.

(c) Fails or refuses to comply with or to cure the default of any provision of Section 6 for a period of twenty (20) days after written notice thereof from the RDA. If the Developer has taken reasonable steps to cure, but cannot reasonably cure such default within the twenty (20) day period, it shall have a reasonable time thereafter to effectuate such cure.

The right to repurchase, reenter and repossess to the extent provided in this Agreement, shall be subordinate, subject to, be limited by and shall not defeat, render invalid or limit any mortgage, deed of trust, sale and leaseback or other security instrument or conveyance for financing permitted by this Agreement.

To exercise its right to repurchase, reenter and take possession of the Site, the RDA, or its nominee, shall pay to the Developer the Purchase Price set forth in Section 4, minus the amount needed to repay any liens, encumbrances or other security instruments held against the Site for the purpose of financing the construction improvements thereon so as to enable the RDA to receive title to the Site free and clear of any such liens, encumbrances, outstanding claims, bills to subcontractors, labor/material suppliers, or other security instruments (collectively the "Repurchase Price").

For the purpose of implementing the provision of this Section, at the time of conveyance of the Site, the Developer will deliver to the Escrow Agent an executed and acknowledged Quitclaim Deed in the form of Exhibit "I" as attached hereto. The deposit of this deed will be accompanied by irrevocable escrow instructions in the form of Exhibit "J" as attached hereto directed to the Escrow Agent and signed by the Developer and the RDA. If any of the events authorizing the RDA to repurchase, reenter and take possession of the Site as provided in this Section occur, the RDA may, without limiting its remedies under this Agreement, direct the Escrow Agent, upon at least twenty (20) days' prior notice to the Developer, to record the Quitclaim Deed to the Site, provided in no event shall the Quitclaim Deed be recorded until such time as the Developer has received full payment of the Repurchase Price. If the Developer completes construction on or before the time set forth in Section 6(d), the RDA agrees to join with the Developer in instructing the Escrow Agent to return the Quitclaim Deed to the Developer.

## **26. SURVIVAL**

The representations and warranties contained in this Agreement, and the covenants that extend beyond the conveyance of title, shall survive the recordation of any deed and shall not be deemed merged into such deed.

## **27. SUCCESSORS AND ASSIGNS**

This Agreement shall inure to the benefit of and bind the successors and assigns of the respective parties hereto, subject to the provisions of this Agreement regarding assignment.



**28. NONLIABILITY OF RDA AND CITY OF LAS VEGAS OFFICIALS AND EMPLOYEES**

No official or employee of the RDA or the City of Las Vegas shall be personally liable to the Developer for any default or breach by the RDA or the City of Las Vegas, for any amount which may become due to the Developer or for any obligation of the RDA or the City of Las Vegas under the terms of this Agreement.

**29. NOTICES, DEMANDS AND COMMUNICATIONS**

Formal notices, demands and communications between the RDA and the Developer shall be sufficiently given if made in writing and dispatched by registered or certified mail, postage prepaid, return receipt requested or by personal delivery, to the principal offices of the RDA and the Developer as set forth in this Section 29. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate in writing.

If to the RDA:	Operations Officer City of Las Vegas Redevelopment Agency 400 Stewart Avenue, 2 <sup>nd</sup> Floor Las Vegas, Nevada 89101
With a copy to:	City Attorney's Office City of Las Vegas 400 Stewart Avenue, 9 <sup>th</sup> Floor Las Vegas, Nevada 89101
If to the Developer:	Bank of America, N.A. 13510 Ballantyne Corp Place NC2-109-06-05 Attn: Real Estate Administration - 6th Floor Charlotte, NC 28277
	With copies to:  Bank of America, N.A. 1025 Elm Street, 9th Floor TX1-944-09-05 Dallas, Texas 75202-3113 Attn: Judy Wilkinson

And

Bank of America, N.A.  
c/o: Jones Lang LaSalle  
201 E. Washington St., 19th Floor  
AZ1-200-19-19  
Phoenix, AZ 85004-2343  
Attn: Bank of America

**30. SEVERABILITY**

Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law, but if any provision shall be invalidated, it shall be deemed to be severed from this Agreement and the remaining provisions shall remain in full force and effect.

**31. GOVERNING LAW**

The interpretation and enforcement of this Agreement shall be governed in all respects by the laws of the State of Nevada.

**32. CAPTIONS**

The captions contained in this Agreement are for the convenience of the parties and shall not be construed so as to alter the meaning of the provisions of the Agreement.

**33. DISCLOSURE OF PRINCIPALS**

Developer warrants that it has disclosed, on the form attached hereto as Exhibit "K", all principals of Developer. The Disclosure of Principals on Exhibit K is of the Board of Directors of Bank of America, N.A. which may change from time to time as reflected in the public filings of Bank of America, N.A.

**34. EFFECTIVE DATE OF THE AGREEMENT**

This agreement shall not become effective until all of the following conditions have been satisfied:

- (a) The RDA Board has approved the execution of this Agreement by the RDA's Chairman; and
- (b) This Agreement has been executed by the RDA's Chairman; and
- (c) This Agreement has been executed by a duly authorized representative of Developer.

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35. ENTIRE AGREEMENT, WAIVERS AND AMENDMENTS

This Agreement is executed in two duplicate originals, each of which is deemed to be an original. This Agreement comprises pages 1 through 21, inclusive, and Exhibits A, B, C, D, E, F, G, H, I, J and K attached hereto and incorporated herein by reference, all of which constitute the entire understanding and agreement of the parties.

This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the RDA and the Developer and no waiver of one provision shall be construed as a waiver of that provision in the future or as a waiver of any other provision.

All amendments hereto must be in writing and signed by the appropriate authorities of the RDA and the Developer.

Date of RDA Board Approval:

\_\_\_\_\_, 2007

CITY OF LAS VEGAS  
REDEVELOPMENT AGENCY ("RDA")

By \_\_\_\_\_  
OSCAR B. GOODMAN, Chairman

Approved as to form:

Thomas R. Green 8/31/07  
Date

ATTEST:

\_\_\_\_\_, RDA Clerk

BANK OF AMERICA, N.A., a national  
banking association ("DEVELOPER")

By \_\_\_\_\_

Its \_\_\_\_\_

## ACKNOWLEDGMENTS

STATE OF NEVADA                    )  
  ) ss.  
COUNTY OF CLARK                )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, OSCAR B. GOODMAN, who acknowledged that he executed the above instrument.

\_\_\_\_\_  
NOTARY PUBLIC, in and for said  
County and State

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me, the undersigned, a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, \_\_\_\_\_, who acknowledged that \_\_\_\_\_ he executed the above instrument.

\_\_\_\_\_  
NOTARY PUBLIC, in and for said  
County and State

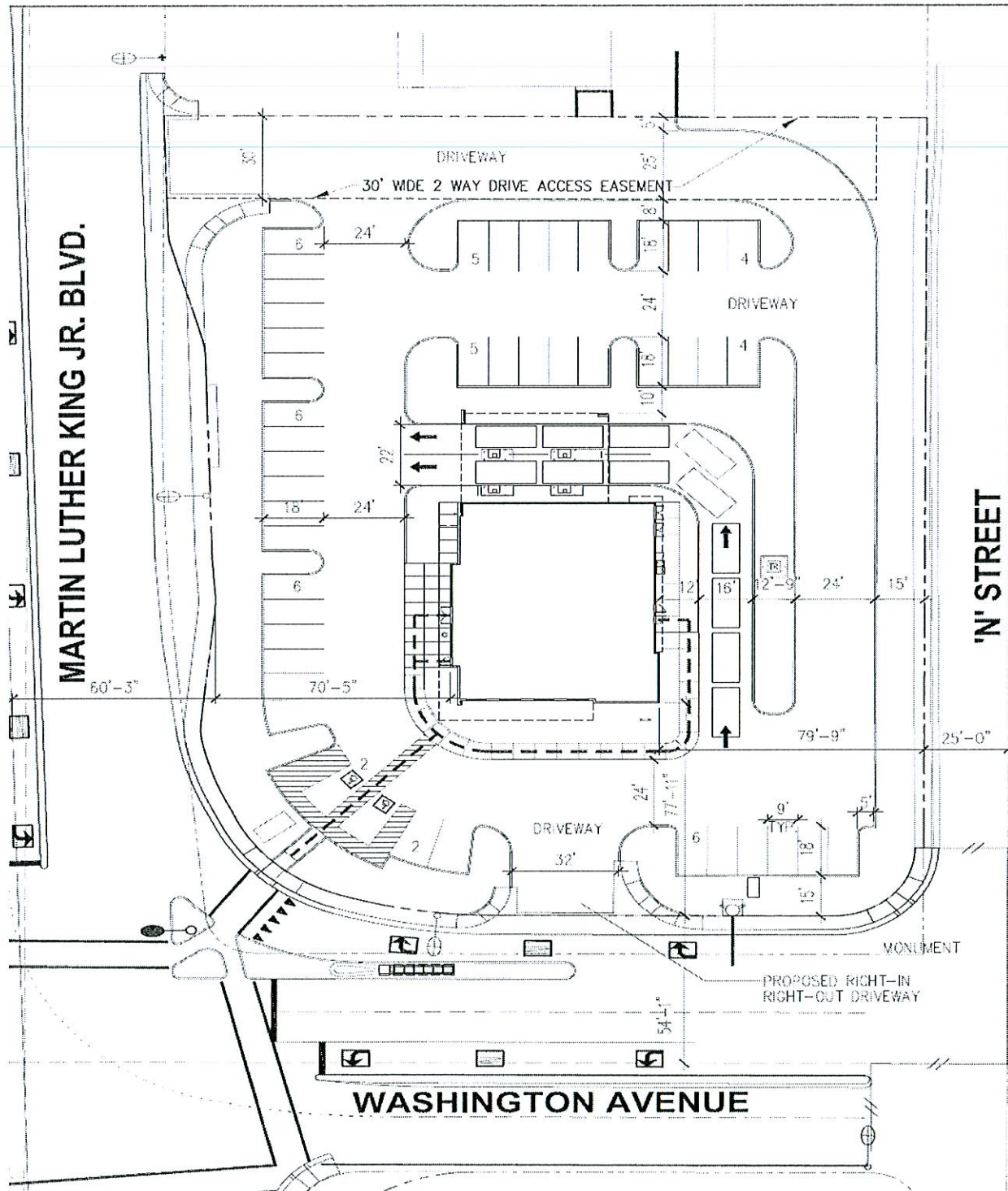


## LIST OF EXHIBITS

EXHIBIT "A"	SITE DEPICTION
EXHIBIT "B"	SITE DESCRIPTION
EXHIBIT "C"	EMPLOYMENT PLAN
EXHIBIT "D"	SCOPE OF DEVELOPMENT
EXHIBIT "E"	SCHEDULE OF PERFORMANCE
EXHIBIT "F"	FORM OF GRANT, BARGAIN AND SALE DEED
EXHIBIT "G"	FORM OF DECLARATION OF DEVELOPMENT COVENANTS AND RESTRICTIONS
EXHIBIT "H"	FORM OF CERTIFICATE OF COMPLETION
EXHIBIT "I"	FORM OF QUIT CLAIM DEED
EXHIBIT "J"	FORM OF IRREVOCABLE ESCROW INSTRUCTIONS
EXHIBIT "K"	DISCLOSURE OF PRINCIPALS

EXHIBIT "A"

SITE DEPICTION



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EXHIBIT "B"

SITE DESCRIPTION

APN: 139-28-604-008

THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE SOUTHWEST QUARTER (SW ¼) OF THE NORTHEAST QUARTER (NE ¼) OF SECTION 28, TOWNSHIP 20 SOUTH, RANGE 61 EAST. M.D.B.&M., CLARK COUNTY, NEVADA.

EXCEPTING THEREFROM THE SOUTHERLY 40.00 FEET AND THE WEST 40.00 FEET AS CONVEYED TO THE CITY OF LAS VEGAS FOR STREET PURPOSES.

FURTHER EXCEPTING THEREFROM THAT PORTION LYING WITHIN THE BOUNDARIES OF BONANZA TERRACE SUBDIVISION, AS SHOWN BY MAP THEREOF ON FILE IN BOOK 5 OF PLATS, PAGE 20, IN THE CLARK COUNTY, NEVADA RECORDS, AND ALSO STRIP OF LAND 25 FEET IN WIDTH LYING WESTERLY AND ADJACENT TO THE WESTERLY LINE OF SAID BONANZA TERRACE.

FURTHER EXCEPTING THEREFROM THE FOLLOWING DESCRIBED LAND AS CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED FEBRUARY 9, 1965 AS DOCUMENT NO. 486435 IN BOOK 605.

FURTHER EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE CITY OF LAS VEGAS BY DEED RECORDED AUGUST 2, 2000 IN BOOK 20000802 AS DOCUMENT NO. 00802, OFFICIAL RECORDS.

FURTHER EXCEPTING THEREFROM THAT PORTION GENERALLY LOCATED NORTHEAST OF WASHINGTON AVENUE AND MARTIN LUTHER KING BOULEVARD THAT IS PENDING CONVEYANCE TO THE CITY OF LAS VEGAS FOR RIGHT-OF-WAY TAKE PURPOSES OF APPROXIMATELY 6,447 SQUARE FEET.

FURTHER SUBJECT TO EASEMENTS PENDING RECORDATION ON THE FOLLOWING PORTIONS:

THAT PORTION GENERALLY LOCATED NORTHEASTERLY OF WASHINGTON AVENUE AND MARTIN LUTHER KING BOULEVARD FOR AMERICAN DISABILITY ACT EASEMENT PURPOSES OF APPROXIMATELY 90 SQUARE FEET;

THAT PORTION GENERALLY LOCATED NORTHEASTERLY OF WASHINGTON AVENUE AND MARTIN LUTHER KING BOULEVARD FOR FIRE HYDRANT EASEMENT PURPOSES OF APPROXIMATELY 36 SQUARE FEET; AND,

THAT PORTION GENERALLY LOCATED NORTHEASTERLY OF WASHINGTON AVENUE AND MARTIN LUTHER KING BOULEVARD FOR CROSS ACCESS EASEMENT PURPOSES OF APPROXIMATELY 6,411 SQUARE FEET.

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## EXHIBIT "C"

### EMPLOYMENT PLAN

The Employment Plan of the Bank of America, N.A. ("BANK") is prepared in accordance with NRS 279.482(2) and the City of Las Vegas Redevelopment Agency Employment Plan Policy (hereinafter the "Policy") dated June 3, 1992, and amended June 6, 2001 (See Attachment 1). The intent of the Policy is that projects which benefit from redevelopment funds create new jobs for residents of the Redevelopment Area and the City of Las Vegas Special Impact Area. This Employment Plan outlines the steps to be taken by BANK to assist it in achieving compliance with the Policy. In accordance with the Policy, developers and build-to-suit owners which receive redevelopment project funds are encouraged to hire individuals who live within the area of the operations and are economically disadvantaged residents, physically handicapped, members of racial minorities, veterans, women.

The Plan herein is divided into two parts, as contemplated by the Policy. Since BANK is an entity which is proposing to construct commercial, office or retail space, it hereby submits an employment plan in its capacity as a "developer." In addition, the BANK as a prospective owner/lessee of space which will have been acquired by use of redevelopment funds, hereby submits an employment plan in its capacity as a "build-to-suit owner/lessee" for the post-construction phase of the Project.

#### PART I

##### Developer Employment Plan

The Development Employment Plan shall apply during the construction phase of the Project.



1. Description of the Project to be Constructed. The “Project” to be constructed by BANK will consist of one building and related banking facilities (e.g., drive-thru lanes, ATMs, lighting and signage), that will be developed over approximately a six to twelve month period. This Project is intended to replace the existing banking facility located at 835 N. Martin Luther King Blvd., Las Vegas, NV (the “Existing Facility”) which is being closed due to the expansion of Martin Luther King Blvd.

2. Contracts for Construction of the Project. BANK will promote the utilization of women, minority, disabled, and veteran-owned business enterprises for the construction of the Project, as discussed more fully in paragraph 3 below. In this regard, it will establish, as targets, the participation goals established by the City in its “Equal Opportunity Contracting Policy” (see Attachment 2). These goals represent the dollar value of subcontracts and materials agreements awarded to women, minority, disabled and veteran-owned businesses expressed as a proportion of the total dollar value of bids. While it is difficult to give an exact number of jobs to be created as a result of the construction of the project, it is estimated that at least 60 jobs will be created during the development and construction phase.

The Policy requests a list and the amount of contracts to be let for the construction of the redevelopment project. Since BANK has not yet caused the bid documents to be prepared, it is premature to identify the subcontracts and material agreements that will be required for construction. When the construction drawings and bid documents have been received, BANK, through its construction manager, will seek input regarding the bid estimates from various contractors and subcontractors, including minority, women, disabled, veterans (“MWDV”) business firms. Bid documents will then be completed and disseminated, using the City’s Minority Vendors Directory, as described below. It is anticipated that these documents will be

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prepared approximately three months after the signing of the Disposition and Development Agreement. At such time, BANK will submit an Addendum to this Plan identifying the construction contracts.

3. Manner of Involving MWDV Businesses. BANK hereby certifies that, for the construction phase of the Project, it shall instruct its project manager and construction manager to use the City's Minority Vendors Directory to locate potential subcontractors. These entities shall notify qualified vendors identified in such directory of contracts to be let for construction, in sufficient time to allow effective participation by MWDV owned business firms. A copy of the notification shall be submitted to the Redevelopment Agency.

In addition to the above, BANK will require that its project manager and/or construction manager perform one or more of the following tasks to assure good faith compliance with the Policy:

(viii) Advertise in the newspapers of general circulation, trade association papers and MWDV focused media concerning subcontracting opportunities, giving sufficient time to allow the opportunity for effective participation by MWDV owned businesses;

(ix) Contact and coordinate with the City's Minority Business Officer and Redevelopment Agency representatives to obtain lists and information concerning City's certified MWDV owned business enterprises;

(x) Utilize referral agencies such as MWDV community organizations, professional associations and small business assistance offices or other organizations that provide assistance in the recruitment and placement of MWDV business enterprises;



(xi) When appropriate, break down contracts into the smallest economically feasible units to facilitate and encourage participation by MWDV owned businesses to the maximum extent possible that will comply with NRS 332;

(xii) Ensure access by interested MWDV owned business enterprises to plans and specifications and adequate information about the scope of services and other requirements; and

(xiii) Offer information to interested MWDV owned business firms regarding the obtaining of bonding, lines of credit and/or insurance.

## PART II

### Build-to-Suit Owner/Lessee Employment Plan

The Build-to-Suit Owner/Lessee Employment Plan shall apply to Bank's hiring of new permanent employees during the post-construction phase of the Project. In this regard, BANK hereby discloses that it is its intent to offer employment at the new Project upon completion to most if not all of its existing employees at the Existing Facility or at one of BANK'S other facilities (the "Existing Employees") and therefore Part II of this Employment Plan shall apply only to those new positions created by the new Project that are NOT filled by the Existing Employees.

#### 4. Description of Existing Opportunities for Employment within the Area.

Prior to construction of the Project, BANK believes that the existing employment opportunities in the area are limited and of the limited employment opportunities that are available, even fewer are in the banking area

#### 5. Estimate and Description of New Jobs Created as a Result of the Project. It

is estimated that approximately 5 new permanent jobs will be created as a direct result of the

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Project in addition to retaining 18 positions. However, as previously mentioned many of these jobs may be filled by Existing Employees of the BANK. It is anticipated that new full-time and part-time jobs will be created in the teller, loan officer, account representative and other sales and customer service areas.

6. Description of the Steps to be Taken to Achieve Objectives. It is the intent of BANK to fill as many as possible new permanent jobs created as a direct result of the Project by residences in the targeted areas who are economically disadvantaged, physically handicapped, members of racial minorities, veterans, and women. A variety of steps are planned in order to meet this objective. First, BANK will endeavor to advertise in newspapers of general circulation, trade association papers and MWDV focused media concerning new permanent employment opportunities associated with the Project whenever it is reasonably practicable under the circumstances.

Second, BANK (and its tenants, if any, in the Project) will endeavor to utilize one or more of the following referral agencies to seek assistance in identifying qualified job applicants;

- (a) Nevada Employment Security Department;
- (b) Nevada Business Services, Inc.;
- (c) Urban Chamber of Commerce;
- (d) Latin Chamber of Commerce;
- (e) Las Vegas Indian Center;
- (f) Endeavor / March of Dimes;
- (g) Nevada Welfare Department;
- (h) Women's Development Center;



- (i) St. Vincent's Job Desk;
- (j) Community College of Southern Nevada;
- (k) Bureau of Vocational Rehabilitation of Southern Nevada;
- (l) Dr. Martin Luther King, Jr. Committee;
- (m) Nevada Partners;
- (n) The City of Las Vegas Housing Authority;
- (o) The Governor's Committee on Employment for Individuals with Disabilities;
- (p) Southern Nevada Homeless Coalition;
- (q) Key Foundation;
- (r) Military Veterans Volunteer Center;
- (s) Southern Nevada Disenfranchised Veterans Consortium;
- (t) Veterans Administration (VA);
- (u) Lowden Veterans Center and Museum / CONVO;
- (v) National Action Network;
- (w) State of Nevada Casual Labor Office;
- (x) Las Vegas Rescue Mission;
- (y) Sign Snow;
- (z) Such other referred agencies that are suitable, as determined by the City Manager for the City of Las Vegas, or their designee.

Further, BANK will contact the Minority Business Officer in the Purchasing and Contracts Division of the Department of Finance and Business Services for the City of Las Vegas and Redevelopment Agency officials to obtain assistance in its hiring activities.

7. BANK shall pay a minimum rate which is the higher of the federal minimum wage or the market rates paid by employers in similar businesses in order to ensure that redevelopment jobs provide decent standards of living for employees.

8. BANK will notify in writing one or more of the referral agencies of job positions which are initially available for hire at least 30 working days prior to anticipated initial hiring dates. Thereafter, for the filling of subsequent positions, BANK will endeavor to give all previously responsive agencies a notification in writing within a reasonable time prior to the anticipated hiring dates. Both of the above-referenced notifications will include a description of the required job qualifications, the rate of pay, the anticipated hiring date and the date by which the referral agency must refer qualified applicants in order to be considered for hiring. BANK will copy the Redevelopment Agency on all such written correspondence.

9. BANK will work closely with the agencies designated in item 3 to provide them the information needed for the agencies to design and establish programs to train and upgrade the skills of qualified employees to fill the needs of their businesses. BANK will make a good faith effort to provide the information in advance of the need for the employees in order to provide a meaningful opportunity to provide training for the jobs.

10. Pursuant to Section H of the Employment Plan Policy, BANK will submit quarterly reports to the Redevelopment Agency for the duration of the Disposition and Development Agreement between the Redevelopment Agency and BANK, demonstrating its compliance with the requirements of the Employment Plan. BANK shall not charge for copies of the reports.



**EQUAL OPPORTUNITY CONTRACTING POLICY**

Minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, creed, sex, or national origin in consideration for an award.

**A. GENERAL**

- 1) An M/W/DVBE may participate as a prime contractor, sub-contractor, joint venture partner with a prime or sub-contractor, or as a vendor of materials and/or supplies. Only those sub-contractor(s) and suppliers contracting directly with or to be paid by the prime contractor may be credited toward the goals.
- 2) An M/W/DVBE joint venture partner must be responsible for a clearly defined scope of work detailed separately from the work to be performed by the non-M/W/DVBE joint venture partner. In addition, an agreement signed by all parties, identifying the extent to which each joint venture partner shares in the Ownership, control, management, risk and profits of the joint venture must be submitted to the City of Las Vegas.
- 3) An M/W/DVBE must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the Work and must carry out its responsibility by actually performing, managing, and supervising the Work specified.
- 4) The Contractor shall not be entitled to payment for any work or material scheduled to be performed by an M/W/DVBE unless it is performed or supplied by the listed M/W/DVBE or by an approved substitution.

**B. MBE/WBE/DVBE GOALS**

- 1) The Owner has adopted the following goals for MBE/WBE/DVBE participation and utilization.

**Minority-owned Business Enterprise (MBE) 25%**

**Women-owned Business Enterprise (WBE) 5%**

**Disabled Veteran-owned Business Enterprise (DVBE) 2.5%**

These percentage goals represent the value of sub-contracts and materials agreements awarded to M/W/DVBE's based on the total dollar value of the bid. Only sub-contractors and suppliers listed prior to bid opening may be counted toward the goals.

- 2) Each Bidder is responsible for making a sufficient portion of the Work available to sub-contractors and suppliers and to select those portions of the Work and/or material needs consistent with M/W/DVBE availability.
- 3) Each Bidder is responsible for making a good faith effort to meet the M/W/DVBE participation and utilization goals. If the Bidder fails to meet the goals, information documenting the Bidder's good faith efforts to achieve the goals must be submitted prior to bid award.
- 4) Prior to award of the Contract, the apparent low bidder's bid submission will be reviewed to determine if the Owner goals have been met. If goals have been achieved, the Bidder will not be required to submit any information documenting their good faith efforts to meet the goals.

- 5) M/W/DVBE prime contractors will receive credit toward the goals only for that portion of the Work to be completed by their own workforce and that of other M/W/DVBE subcontractors.
- 6) M/W/DVBE prime contractors are also expected to meet the goals for M/W/DVBE participation or to demonstrate a good faith effort to meet the goals.

### C. GOOD FAITH EFFORT

1. A good faith effort is defined as that which, given all relevant circumstances, a Contractor actively and aggressively seeking to meet the goals would make. Efforts that are merely pro forma, are not good faith efforts to meet the goals, even if they are sincerely motivated, if, given all relevant circumstances, those efforts could not reasonably be expected to produce a level of participation to meet the goals. In evaluating good faith efforts, the following are some examples that the Owner will consider:
  - a) Whether the Contractor attended any pre-bid conferences scheduled to discuss the Owner's Equal Opportunity Contracting Program goals and requirements for the Project.
  - b) Whether the Contractor advertised in general circulation, trade association, and minority, women, and disabled veteran-focus media concerning sub-contracting opportunities in time to allow opportunity for effective participation by M/W/DVBE firms.
  - c) Whether the Contractor contacted the Owner's Minority Business Enterprise Section for a list of identified M/W/DVBE firms and the Owner's M/W/DVBE Resource List, and effectively used this information.
  - d) Whether the Contractor effectively used additional services of available: (i) minority, women, and disabled veteran community organizations; (ii) minority, women, and disabled veteran professional associations; (iii) minority, women, and disabled veteran trade associations; (iv) local, state and federal small business assistance offices; and (v) other organizations that provide assistance in the recruitment and placement of M/W/DVBE's.
  - e) Whether the Contractor provided written notice to a reasonable number of specific M/W/DVBE firms in sufficient time to allow opportunity for effective participation in the Contract.
  - f) Whether the Contractor followed up initial solicitations of interest by contacting M/W/DVBE firms to determine with certainty whether they were interested.
  - g) Whether the Contractor selected portions of the Work to be performed by M/W/DVBE firms in order to increase the likelihood of meeting the established goals, including, where appropriate, breaking down contracts into economically feasible units to facilitate M/W/DVBE participation.
  - h) Whether the Contractor provided interested M/W/DVBE firms with access to plans, specifications and adequate information about the scope of services and other requirements of the Contract.
  - i) Whether the Contractor negotiated in good faith with interested M/W/DVBE firms in order to arrive at a fair price, opting for negotiation in lieu of inviting bids.
  - j) Whether the Contractor fairly determined the qualifications of interested M/W/DVBE firms using only the criteria specified in the Bid Documents.



- k) Whether the Contractor made efforts to assist interested M/W/DVBE firms in obtaining bonds, lines of credit, insurance, and/or meeting other governmental contracting requirements.
  - l) Whether the Contractor documented legitimate reasons why the particular M/W/DVBE's contacted were not utilized or qualified.
  - m) Other evidence to indicate compliance with the spirit of the Owner's Equal Opportunity Contracting Program.
2. This list is a guideline and is not meant to be exhaustive. The exercise of these good faith efforts does not necessarily establish a determination of compliance. In the determination of whether a potential contractor exercised good faith efforts to achieve the W/M/DVBE goals, the availability of qualified M/W/DVBE firms for the type of work involved on a particular contract will be considered.
  3. In the event that a potential contractor has not achieved the M/W/DVBE participation goals, it may be entitled to receive an award of the contract if it exercises good faith efforts to achieve the goal, but is unable to do so.
  4. Lack of good faith efforts will subject a potential qualified contractor's bid to additional scrutiny by the Minority Business Enterprise Section, and may cause the award process to be held in abeyance until an appropriate determination can be made.

#### **D. SUBMITTALS**

1. If goals have been achieved, the apparent low bidder will not be required to submit any information documenting their good faith efforts to meet the goals.
2. If the apparent low bidder fails to meet the Owner's M/W/DVBE goals, documentation supporting their good faith efforts must be submitted within five (5) working days after bid opening to the Owner's Minority Business Enterprise Section. Such documentation must indicate all efforts expended under paragraph C of this Section.

#### **E. ADDITIONAL INFORMATION**

Any prospective bidder wishing additional information on the Owner's Equal Opportunity Contracting Policy or information regarding minority, women, and disabled veteran contractors may contact the Minority Business Enterprise Section at (702) 229-6231.

## EXHIBIT “D”

### SCOPE OF DEVELOPMENT

Bank of America as a result of the closing of its branch on the southwest corner of MLK and Washington due to the City’s widening of MLK is proposing to move its branch to the northeast corner of MLK and Washington a property currently owned by the City.

Bank of America proposes to build a new one-story, freestanding bank building with a drive-thru. The proposed building is Type 5-B construction, consisting of stucco, colored metal canopies and storefront glazing. The Bank is proposing two drive-thru lanes of ATMs with stacking for 12 cars collectively. The proposed site layout will include 15’-0” wide landscaping at the ROW at MLK, Washington & N Street, 44 parking spaces, and a 30’ wide 2-way drive access easement for the existing shops building to the north of the site. Other improvements will include landscaping, hardscaping, lighting, signage and flagpole. All substandard improvements currently on the site will be removed and replaced.

At the request of the City Redevelopment Agency, the Bank will provide a 30’-0” wide, 2-way drive access easement along the North property line in order to provide future access for the existing shops building North of the Bank’s parcel.

The Bank has already received Site Development Plan approval for this project (SDR-21151). The proposed completion date would be second quarter of 2008.

#### Summary:

Site area:	62,355 sq. ft. (1.43 acres)
Building area:	4,446 sq. ft. building w/1,428 sq. ft. canopy = 5,882 sq. ft.
Building coverage:	5,874 sq. ft. (7% of site)
Landscape:	19,241 sq. ft. (29% of site)
Hardscape:	38,668 sq. ft. (64% of site)
Parking required:	4,446 / 200 = 22 spaces
Parking provided:	46 spaces including (2) disabled access spaces
Existing Zoning:	C-1
Building height:	23’-0” max.



## EXHIBIT "E"

### SCHEDULE OF PERFORMANCE

<u>Action</u>	<u>Date</u>
1. Execution and Delivery of Agreement by Developer to RDA with Earnest Money Deposit	On or before the date that Agreement is brought to the RDA Board for consideration and possible approval.
2. Effective Date of Agreement	Upon the RDA Board's approval of the Agreement and full execution of said Agreement by both Developer and RDA.
3. Opening of Escrow	RDA and Developer shall open escrow at Nevada Title Co. within seven (7) calendar days from the Effective Date of the Agreement. Developer shall receive a credit from RDA of \$10.00 towards the Purchase Price and said credit shall also be applied towards the Earnest Money Deposit.
4. Delivery of Preliminary Title Report (PTR) to Developer by Escrow Agent	Escrow Agent shall deliver the PTR to Developer within seven (7) calendar days from Opening of Escrow and receipt of a fully executed copy of the Agreement.
5. Approval of Title Report by Developer.	Within thirty (30) of Developer's receipt of both the Title Report and ALTA Survey (but in no event later than the expiration of the Inspection Period)
6. Expiration of Inspection Period pursuant to Section 20 of the Agreement	Upon sixty (60) calendar days from the Effective Date of this Agreement
7. RDA Board approves a cross access easement for the property to the north of the Site and said easement is recorded in the Office of the Recorder for the County of Clark	On or prior to seven (7) days before Site Closing and Conveyance of the Site from RDA to Developer.
8. Pending Right-of-Way take is conveyed to City and pending American Disability Act and fire hydrant easements are recorded in the Office of the Recorder for the County of Clark	On or prior to seven (7) days before Site Closing and Conveyance of the Site from RDA to Developer.

9. Site Closing and Conveyance of the Site from RDA to Developer	On mutually agreeable date not later than (15) days after the later of: (i) the date on which all conditions precedent to such conveyance having been satisfied (or waived), or (ii) the expiration date for the Inspection Period.
10. Commencement of Construction of the Project on the Site by Developer	Within twelve (12) months from Site Closing and Conveyance of the Site from RDA.
11. Developer provides RDA with written Completion Notice in accordance with Section 6(l) of the Agreement	Upon substantial completion of the Project as determined by Developer.
12. RDA and Developer conduct a joint inspection of the Project	Within ten (10) business days from receipt of a written Completion Notice by the RDA from Developer.
13. Certificate of Completion - RDA to furnish Developer with a Certificate of Completion in accordance with Section 6(l) of the Agreement	Upon joint inspection of the project and RDA's reasonable judgment that Developer has substantially completed the Project.
14. Completion of Construction of the Project on the Site by Developer	Within twelve (12) months from Commencement of Construction, Developer must secure a temporary or permanent certificate of occupancy for the Project from the City and Certificate of Completion from the RDA.

NOTE: All construction commencement and completion dates and times are subject to effect of Force Majeure Delays in accordance with Section 6(d) of the Agreement.



EXHIBIT "F"

FORM OF GRANT DEED

APNs:

RPTT: \_\_\_\_\_

Recording Requested by:

City of Las Vegas Redevelopment Agency, Nevada

After recordation, mail to:

City of Las Vegas Redevelopment Agency  
Office of Business Development  
400 Stewart Avenue  
Las Vegas, Nevada 89101

GRANT, BARGAIN AND SALE DEED

For valuable consideration, the receipt of which is hereby acknowledged, the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic of the State of Nevada (herein the "Grantor"), hereby grants, bargains and sells to BANK OF AMERICA, N.A., a national banking association (herein the "Grantee"), all right, title, and interest in the real property (the "Property") legally described in the document attached hereto as Attachment "A" and incorporated herein by this reference, which Property is also known as APN: \_\_\_\_\_.

1. The Property is conveyed pursuant to a development and disposition agreement ("the Agreement") regarding the Property, entered into by and between Grantor and Grantee and dated \_\_\_\_\_. The conveyance herein is subject to the terms, covenants, and conditions set forth in the Agreement.

2. The Agreement provides, among other things, that Grantee's use, occupation, and development of the Property is subject to compliance with certain covenants, restrictions, and obligations and that Grantee's failure to perform thereunder may result in Grantor's exercising its rights to enforce a lien as set forth in Section 25 of said Agreement.

3. The absence from this Deed of the covenants, restrictions, and obligations contained in the Agreement shall not work as a merger thereof into this Deed to the exclusion of said covenants, restrictions, and obligations.

4. All of the covenants, restrictions, conditions and obligations set forth in the foregoing paragraphs shall remain in effect for a period of five years from the recordation of this Deed in the Official Records, Clark County, Nevada Recorder's Office, and shall automatically expire at the

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end of such five year period.

5. The Property is conveyed subject to restrictions, reservations, conditions, rights-of-way, easements and other encumbrances of record that are recorded herewith.

IN WITNESS THEREOF, the Grantor and Grantee have caused this instrument to be executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

CITY OF LAS VEGAS REDEVELOPMENT  
AGENCY

By: \_\_\_\_\_  
OSCAR B. GOODMAN, Chairman

“GRANTOR”

ATTEST:

\_\_\_\_\_  
\_\_\_\_\_, City of Las Vegas  
Redevelopment Agency Clerk

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney          Date

ACCEPTANCE

The provisions of this Grant, Bargain, and Sale Deed are hereby approved and accepted.

BANK OF AMERICA, N.A., a national banking  
association

By \_\_\_\_\_  
Its \_\_\_\_\_

“GRANTEE”



ACKNOWLEDGMENTS

STATE OF NEVADA

SS.

COUNTY OF CLARK

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me, the undersigned, a Notary Public in and for the County of Clark, State of Nevada, OSCAR B. GOODMAN, who acknowledged that he executed the above instrument.

\_\_\_\_\_  
NOTARY PUBLIC, in and for said  
County and State

STATE OF \_\_\_\_\_

SS.

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2007, personally appeared before me, the undersigned, a Notary Public in and for the County of \_\_\_\_\_, State of \_\_\_\_\_, \_\_\_\_\_, who acknowledged that he executed the above instrument.

\_\_\_\_\_  
NOTARY PUBLIC, in and for said  
County and State

EXHIBIT "G"

FORM OF DECLARATION OF DEVELOPMENT COVENANTS AND  
RESTRICTIONS

APN # \_\_\_\_\_

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

City of Las Vegas Redevelopment Agency  
400 Stewart Avenue, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101

Escrow # \_\_\_\_\_

---

(Space above line for Recorder's use only)

DECLARATION OF  
DEVELOPMENT COVENANTS AND RESTRICTIONS

THIS DECLARATION OF DEVELOPMENT COVENANTS AND RESTRICTIONS ("Development Declaration") dated, for purposes of reference only, as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_, is entered into between CITY OF LAS VEGAS REDEVELOPMENT AGENCY, is an agency of the City of Las Vegas ("RDA") and BANK OF AMERICA, N.A., a national banking association ("Developer"), with reference to the following facts and objectives:

**RECITALS:**

A. Pursuant to that certain Disposition and Development Agreement dated as of \_\_\_\_\_, 2007 between RDA and Developer (together with any amendments thereto, the "DDA"), RDA, of even date herewith, is conveying to Developer the real property described on Attachment A attached hereto (the "Covered Property"). Terms used herein which are not defined herein have the meaning given those terms in the DDA.

B. Under the DDA, Developer agreed to construct a full service, retail bank facility with a building footprint of approximately 4,300 square feet (the "Project") on the Covered Property, in conformance with the Plans and Drawings and Drawings to be prepared by Developer and approved by RDA in accordance with the DDA.

C. In order to assure that the Covered Property and the Project are developed in accordance with the DDA, RDA requires, as a condition to its conveyance to Developer of the Covered Property, that Developer execute and acknowledge this Development Declaration.

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D. Developer desires to subject the Covered Property to this Development Declaration setting forth certain obligations owing to RDA by Developer concerning the activities of Developer on and in connection with the Covered Property.

### DECLARATION:

NOW, THEREFORE, Developer hereby covenants, agrees, and declares that all of its interest, as the same may from time to time appear, in the Covered Property shall be held and conveyed subject to the following covenants and restrictions, which shall run with the Covered Property or any portion thereof until released as provided herein and shall be binding upon all parties having or acquiring any right, title or interest in or to the Covered Property or any portion thereof and which are hereby declared to be for the benefit of RDA and its successors and assigns, as follows:

1. Development and Construction of the Project. The Covered Property shall be used for the sole purpose of constructing a full service, retail bank facility with a building footprint of approximately 4,300 square feet. The Project will consist of a single building and will be fully developed with setbacks, landscaping, sidewalks, parking lots, driveways, sewer lines, on-site utilities, and any other required on-site and off-site improvements, as well as, within the agreed upon time schedule, all as set forth in the DDA.

2. Condition of Property. Developer and its representatives have been afforded the opportunity to make such inspections of the Covered Property and matters related thereto as Developer and its representatives desired, including, without limitation, governmental laws and regulations to which the Covered Property is subject, and Developer accepts the Covered Property upon the basis of its review and determination of the applicability and effect of such laws and regulations. Developer acknowledges and agrees that the Covered Property is sold and conveyed to and accepted by Developer in an "as-is" condition with all faults, except as otherwise provided in the DDA or herein. Except as provided in the DDA, RDA makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the Covered Property. In particular, but without limitation, except as provided in the DDA, RDA makes no representations or warranties with respect to the use, condition, title, occupation or management of the Covered Property, compliance with applicable statutes, laws, codes, ordinances, regulations or requirements relating to leasing, zoning, subdivision, planning, building, fire, safety, health or environmental matters, compliance with covenants, conditions and restrictions (whether or not of record), other local, municipal, regional, state or federal requirements, or other statutes, laws, codes, ordinances, regulations or requirements. Developer acknowledges that it has accepted the conveyance of the Covered Property on the basis of Developer's own investigation of the physical and environmental conditions of the Covered Property, including the subsurface conditions, and Developer assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation.

3. Release. Developer, for itself, its successors and assigns, and for each and every subsequent owner or tenant of any portion of the Covered Property (collectively, the "Releasing Parties"), hereby waives, releases, remises, acquits and forever discharges RDA, its affiliates



(including the City of Las Vegas, a political subdivision of the State of Nevada), their employees, agents, officers, successors and assigns (individually a "Released Party" and collectively, the "Released Parties"), of and from any and all claims, suits, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation whatsoever, direct or indirect, which Developer or any other Releasing Party now has or which Developer or any other Releasing Party may have in the future on account of or in any way arising out of or in connection with any contamination or environmental condition of the Covered Property, or any other physical or environmental condition of the Covered Property, or the violation of any federal, state or local law, ordinance, rule or regulation, including, without limitation, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and the Resource Conservation and Recovery Act, arising out of or in connection with any physical or environmental condition of the Covered Property, provided, however, that the foregoing release shall not extend to any Released Party to the extent any such claims, suits, actions, causes of action, demands, rights, damages, costs, expenses, penalties, fines or compensation arise out of or are in connection with the acts or omissions of such Released Party.

#### 4. Release and Termination.

4.1 Dedication to Public Agency or Public Utility. Any portion of the Covered Property, upon dedication or conveyance to, and acceptance by, a public entity or public utility in accordance with the Plans and Drawings, shall be deemed automatically released from the encumbrance of this Development Declaration, without the necessity of executing or recording any instrument of release.

4.2 Acquisition of Covered Property by RDA. Upon the acquisition of all or portions of the Covered Property by RDA by and through any operation of law or instrument of transfer, RDA shall have the right in its sole discretion to terminate this Development Declaration, and release portions or all of the Covered Property from the covenants and restrictions of this Development Declaration, in which event the covenants and restrictions shall be forever terminated and extinguished.

4.3 Right of Release. RDA shall also have the right to release from time to time and at any time, all or any portion of the Covered Property from this Development Declaration for any reason, and the foregoing provisions of this Section 4 shall not be deemed to limit such right in any manner whatsoever.

4.4 Instrument. Following the release of any portion of the Covered Property from the encumbrance hereof, RDA shall, if requested by the Developer of such portion of the Covered Property, execute and cause to be recorded an instrument evidencing such release. Such instrument shall not be necessary, however, to evidence the automatic release of this Development Declaration as to portions of the Covered Property pursuant to Section 4.1 above.

4.5 Termination. The covenants, restrictions and interests created by this Development Declaration shall be in effect for a period of five years from the recordation of this Development Declaration in the Official Records of the Recorder's office of Clark County, State



of Nevada and shall automatically expire at the end of the five year period.

5. Amendments. This Development Declaration may only be amended by a writing executed by RDA and the record owner of the Covered Property, and recorded against the Covered Property. For purposes of this Section 5 only, "Covered Property" shall not include any parcel or portion of the Covered Property that has been released from the encumbrance of this Development Declaration pursuant to Section 4 above.

6. Miscellaneous.

6.1 Captions. The captions used herein are for convenience only and are not a part of this Development Declaration and do not in any way limit or amplify the terms and provisions hereof.

6.2 Interpretation; Government Law. This Development Declaration shall be construed as if prepared by both parties hereto. Each party acknowledges that it has had full benefit of legal counsel in the preparation and negotiation of this Development Declaration. This Development Declaration shall be governed by and construed under the laws of the State of Nevada.

6.3 Attorneys' Fees. In the event any action, arbitration or other proceeding shall be instituted in connection with this Development Declaration, the party prevailing in such action shall be entitled to recover from the other party all of its costs of action, arbitration or other proceeding, including reasonable attorneys' fees as fixed by the court therein.

6.4 Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Development Declaration shall become illegal, null, void or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null, void or against public policy, the remaining portions of this Development Declaration shall not be affected thereby and shall remain in force and effect to the full extent permissible by law.

6.5 Gender and Number. In this Development Declaration (unless the context requires otherwise), the masculine, feminine, and neuter genders and the singular and plural include one another.

6.6 Covenants to Run With the Land; Term. The covenants, restrictions, and reservations of this Development Declaration shall run with and bind the Covered Property and shall inure to the benefit of and be enforceable by RDA and its successors and assigns for a term of five (5) years from the date of this Development Declaration, unless terminated earlier in accordance with Section 4 above.

6.7 Notices. All notices or other communications between RDA and Developer required or permitted hereunder shall be given in accordance with the notice provisions of the DDA.

6.8 Rights of Mortgagees. All restrictions and other provisions herein contained shall be deemed subject and subordinate to all bona fide mortgages and deeds of trust now or hereafter executed upon the Covered Property or any portion thereof, and none of said restrictions shall supersede or in any way reduce the security or affect the validity of any such mortgage or deed of trust; provided, however, that if all or a portion of the Covered Property is sold under a foreclosure of any mortgage or under the provisions of any deed of trust, any purchaser at such sale, including, without limitation, the mortgagee or beneficiary of a deed of trust and the successors and assigns of such purchaser, shall hold any and all property so purchased subject to all of the restrictions and other provisions of this Development Declaration. The foregoing provision shall also apply to a deed in lieu of foreclosure and to the transferee of the lender after such deed in lieu.

IN WITNESS WHEREOF, Developer and RDA have executed this instrument on the day and year first above written.

BANK OF AMERICA, N.A.,  
a national banking association

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_

CITY OF LAS VEGAS REDEVELOPMENT AGENCY, an  
Agency of the City of Las Vegas, Nevada

By:\_\_\_\_\_

Name:\_\_\_\_\_

Title:\_\_\_\_\_



ACKNOWLEDGEMENTS

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_ by \_\_\_\_\_ as \_\_\_\_\_ of BANK OF AMERICA, N.A., a national banking association.

\_\_\_\_\_  
(Signature of notarial officer)

(My commission expires:\_\_\_\_\_)

STATE OF NEVADA

COUNTY OF CLARK

This instrument was acknowledged before me on this \_\_\_\_ day of \_\_\_\_\_, 200\_ by \_\_\_\_\_ as \_\_\_\_\_ of CITY OF LAS VEGAS REDEVELOPMENT AGENCY, an Agency of the City of Las Vegas, Nevada.

\_\_\_\_\_  
(Signature of notarial officer)

(My commission expires:\_\_\_\_\_)

**ATTACHMENT A**

**COVERED PROPERTY**

[Insert legal description of Covered Property]



EXHIBIT "H"

FORM OF CERTIFICATE OF COMPLETION

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America Nevada

P.O. Box 98600

Las Vegas, Nevada 89193-8600

Attn: \_\_\_\_\_

CERTIFICATE OF COMPLETION

WHEREAS, pursuant to the Disposition and Development Agreement (DDA) dated \_\_\_\_\_, 2007, City of Las Vegas Redevelopment Agency, an Agency of the City of Las Vegas, Nevada (RDA), conveyed to Bank of America, N.A., a national banking association (the "Developer"), certain real property for the development of a full service, retail bank facility with a building footprint of a minimum 4,300 square feet in the City of Las Vegas, Nevada, described on Attachment "A", attached hereto and made a part hereof (the "Site"); and

WHEREAS, as referenced in said DDA, RDA shall furnish the Developer with a Certificate of Completion upon substantial completion of all construction and development upon the Site, required of Developer under the DDA, which certificate shall be in such form as to permit it to be recorded in the Recorder's Office of Clark County; and

WHEREAS, such certificate shall be conclusive determination of satisfactory completion of the construction and development on the Site required by the DDA; and

WHEREAS, RDA remains the owner and holder of the "RDA" interests under the DDA and has not previously assigned, encumbered, hypothecated or otherwise transferred its interest under the DDA.

Now, therefore:

1. The Developer hereby certifies to RDA that all construction on the Site has been completed in compliance with the DDA, including without limitation, the issuance of a temporary or permanent certificate of occupancy for the core and shell of the project.

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2. RDA agrees and does hereby certify that the construction and development on the Site have been fully and satisfactorily performed and completed as required by the DDA.

3. This certificate shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, and may be relied upon by any person hereafter acquiring any right, title or interest in or to the Site as conclusive.

IN WITNESS WHEREOF, RDA has executed this Certificate this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_.

CITY OF LAS VEGAS REDEVELOPMENT  
AGENCY, an Agency of the City of Las Vegas,  
Nevada

By: \_\_\_\_\_

Its: \_\_\_\_\_

“RDA”

ATTEST:

By: \_\_\_\_\_

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_

BANK OF AMERICA, N.A.,  
a national banking association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

“Developer”



### Acknowledgments

This instrument was acknowledged before me, a notary public, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of City of Las Vegas Redevelopment Agency.

NOTARY PUBLIC, in and for said County and State  
My Commission Expires:

STATE OF NEVADA            )  
  ) ss.  
COUNTY OF CLARK        )

This instrument was acknowledged before me, a notary public, on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of Bank of America, N.A., a national banking association.

NOTARY PUBLIC, in and for said County and State  
My Commission Expires:

STATE OF \_\_\_\_\_)  
  ) ss.  
COUNTY OF \_\_\_\_\_)

Attachment "A"

SITE DEPICTION

---



EXHIBIT "I"

**FORM OF QUITCLAIM DEED**

APN:

RPTT: \_\_\_\_\_

Recording requested by:

City of Las Vegas Redevelopment Agency  
400 Stewart Avenue, 2<sup>nd</sup> Floor  
Las Vegas, Nevada 89101

After recordation, mail to:

City Attorney's Office  
City of Las Vegas  
400 Stewart Avenue, 9<sup>th</sup> Floor  
Las Vegas, Nevada 89101

**QUIT CLAIM DEED**

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, BANK OF AMERICA, N. A., a national banking association, does hereby REMISE, RELEASE AND QUITCLAIM to the CITY OF LAS VEGAS REDEVELOPMENT AGENCY, a public body, corporate and politic of the State of Nevada, the real property in the city of Las Vegas, County of Clark, State of Nevada, described on Exhibit "A" attached hereto.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

BANK OF AMERICA, N.A.,  
a national banking association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGEMENT

State of Nevada       )  
                              )  
County of Clark       )       :SS

This instrument was acknowledged before me, a notary public, on this day of  
\_\_\_\_\_, 2007, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

EXHIBIT "J"

FORM OF IRREVOCABLE ESCROW INSTRUCTIONS

ESCROW INSTRUCTION FOR QUITCLAIM DEED

\_\_\_\_\_, 2007

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Re: Escrow No. \_\_\_\_\_

Gentlemen:

Bank of America, N.A., a national banking association (the "Developer"), one of the undersigned has entered into that certain Development and Disposition Agreement ("Agreement") dated \_\_\_\_\_, 2007, with the City of Las Vegas Redevelopment Agency (the "RDA"), the other party to these instructions, providing for conveyance of a certain parcel of real property (the "Site").

The Site is the subject of this escrow and is described in the accompanying Quitclaim deed (the "Quitclaim Deed").

Section 25 of the Agreement provides that at the time of conveyance of the Site, the Quitclaim Deed will be delivered to you together with irrevocable escrow instructions and is for the purpose of instructing you as to the disposition of the accompanying Quitclaim Deed.

In the event that you receive from the RDA notice certifying that a copy of it has been delivered concurrently to the Developer and stating that the RDA has given notice of the exercise of the RDA's remedy in Section 25 of the Agreement with respect to the Site and accompanied by satisfactory evidence that any mortgage existing thereon has been discharged or by funds sufficient to discharge such mortgage, you shall at the end of thirty (30) days after receipt of said notice record the Quitclaim Deed, unless during the thirty (30) day period, the Developer objects on the basis that construction has been timely completed pursuant to the Agreement.

The undersigned, jointly and severally, and each of us to the extent that we may lawfully do so and to the extent of unencumbered budgeted appropriations, hereby agrees to defend, indemnify and hold you harmless from any liability whatsoever, including attorneys' fees arising out of your carrying out these instructions.

In the event that you receive notice from the Developer certifying that a copy of the notice has been delivered concurrently to the RDA and stating that the Developer has

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completed the construction as provided in the Agreement, you shall at the end of thirty (30) days after receipt of said notice return the Quitclaim Deed to the Developer, unless during the thirty (30) day period, the RDA objects on the basis that construction has not been completed pursuant to the Agreement.

In the event that you are advised by both parties hereto that the RDA's power of termination with respect to the Site has ended, you will forthwith return the Quitclaim Deed to the Developer.

These instructions may not be withdrawn or in any way amended, modified or waived without the prior written consent of both of the parties hereto.

Please indicate your acceptance of and agreement to carry out these instructions as indicated below.

CITY OF LAS VEGAS REDEVELOPMENT AGENCY

By: \_\_\_\_\_  
OSCAR B. GOODMAN, Chairman

Attest:

\_\_\_\_\_  
\_\_\_\_\_, RDA Clerk

BANK OF AMERICA, N.A.,  
a national banking association

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ hereby accepts and agrees to  
carry out these escrow instructions.

By: \_\_\_\_\_

EXHIBIT "K"

FORM OF DISCLOSURE OF PRINCIPALS

Attached hereto as Exhibit A is an excerpt containing a listing of the Board of Directors of Bank of America Corporation, the holding company of Bank of America, N. A., a national banking association, from its 2006 Annual Report and Form 10-K, which was filed with the Securities and Exchange Commission. A full and complete copy of such Annual Report and Form 10-K is on the Bank of America web site.

I hereby certify under penalty of perjury, that the attached is an excerpt from Bank of America Corporation's 2006 Annual Report and Form 10-K.

BANK OF AMERICA, N.A.,  
a national banking association

By: Stanley W. Parry  
Name: Stanley W. Parry  
Title: Attorney for Bank of America



## Executive Officers and Directors

Bank of America Corporation and Subsidiaries

## Executive Officers

**Kenneth D. Lewis**  
Chairman, Chief Executive Officer  
and President

**Amy Woods Brinkley**  
Chief Risk Officer

**Barbara J. Desoer**  
Chief Technology & Operations Officer

**Adam B. McGee**  
President, Global Consumer &  
Small Business Banking

**Brian T. Moynihan**  
President, Global Wealth &  
Investment Management

**Joa L. Pries**  
Chief Financial Officer

**R. Eugene Taylor**  
Vice Chairman and President, Global  
Corporate & Investment Banking

## Board of Directors

**William Barakat III**  
Chairman, President  
and Chief Executive Officer  
The Barakat Company  
Spartanburg, SC

**Frank P. Beamble Sr.**  
Former Executive Officer  
MDNA Corporation  
Wilmington, DE

**John T. Collins**  
Chief Executive Officer  
The Collins Group Inc.  
Boston, MA

**Gary L. Countryman**  
Chairman Emeritus  
Liberty Mutual Group  
Boston, MA

**Tommy R. Franks**  
Retired General  
United States Army  
Roosevelt, OK

**Paul Fulton**  
Chairman  
Bassett Furniture Industries Inc.  
Winston-Salem, NC

**Charles K. Gifford**  
Former Chairman  
Bank of America Corporation  
Charlotte, NC

**W. Steven Jones**  
Dean  
Kenan-Flagler Business School  
University of North Carolina  
at Chapel Hill  
Chapel Hill, NC

**Kenneth D. Lewis**  
Chairman, Chief Executive  
Officer and President  
Bank of America Corporation  
Charlotte, NC

**Monica C. Lozano**  
Publisher and  
Chief Executive Officer  
La Opinión  
Los Angeles, CA

**Walter B. Mastey**  
President  
Morehouse College  
Atlanta, GA

**Thomas J. May**  
Chairman, President and  
Chief Executive Officer  
NSTAR  
Boston, MA

**Patricia E. Mitchell**  
President and Chief  
Executive Officer  
The Museum of Television & Radio  
New York, NY

**Thomas M. Ryan**  
Chairman, President and  
Chief Executive Officer  
CVS Corporation  
Woonsocket, RI

**O. Temple Sloan Jr.**  
Chairman  
General Parts International Inc.  
Raleigh, NC

**Meredith R. Spangler**  
Trustee and Board Member  
C.D. Spangler Construction Company  
Charlotte, NC

**Robert L. Tillman**  
Chairman and CEO Emeritus  
Lowe's Companies Inc.  
Mooresville, NC

**Jackie M. Ward**  
Retired Chairman/CEO  
Computer Generation Inc.  
Atlanta, GA